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Summary record (partial)* of the 3059th meeting**
Held at the Palais Wilson, Geneva, on Tuesday, 25 March 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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** No summary record was prepared for the 3058th meeting.

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The meeting was called to order at 10.05 a.m.

Organizational and other matters, including the adoption of the report of the pre-sessional working group on individual communications (*continued*)

Draft general comment No. 35 on article 9 (continued) (CCPR/C/GC/R.35/Rev.2)

1. **The Chairperson** invited the Committee members to consider a new paragraph 15 bis (document without a symbol distributed in English, French and Spanish) to replace the paragraph 69 bis discussed at the 3055th meeting.

Paragraph 15 bis

2. **Mr. Neuman** (Rapporteur for the general comment) said that footnotes referring to concluding observations and other general comments issued by the Committee had been added so as to set the paragraph on a more solid basis. The new paragraph would be inserted after paragraph 15, which began the discussion on what constituted arbitrary detention.

3. **Ms. Chanet** said that she had serious reservations about the concept of "the security of the State" as referred to in paragraph 15 bis. While the drafters of the Covenant had referred elsewhere in the text to national security as a justification for restricting certain freedoms, they had certainly not considered that a right as important as the right not to be subjected to arbitrary detention should be limited on such grounds. That was evidenced by the fact that article 4 of the Covenant made no reference to national security. Introducing the concept would give free reign to tyrannical States and to those that believed that the consideration of their national security should be enforced throughout the world. It would be better to use terminology similar to that of article 4, and perhaps to use the term "serious threat", which had been preferred by the drafters of general comment No. 8.

4. **The Chairperson** said that the proposal was not in any way meant to introduce a new concept or to move away from the language of general comment No. 8, which, incidentally, referred to "reasons of public security".

5. **Mr. Flinterman** said that the new wording did not address all the concerns he had expressed. He also wished to know why the phrase "most exceptional circumstances" had been added to the fourth sentence, as in his view it might create a new basis for derogation from major principles of the Covenant.

6. **Mr. Ben Achour** said that if the concept of State security or national security was problematic then perhaps the Committee could use wording closer to that of article 4, which referred to a public emergency which threatened the life of the nation. He also suggested deleting the phrase "preventive detention", which, under French law, implied that criminal proceedings would follow.

7. **Ms. Seibert-Fohr** said that, in her view, the concept of "public security" was much broader than that of "the security of the State". It should also be borne in mind that some legal systems provided for post-conviction preventive detention, which was justified on the ground of public security.

8. **Mr. Rodríguez-Rescia** said that the Committee should not make use of concepts that were not clearly defined in the Covenant. Introducing the concept of national security would allow some authoritarian States to invoke that noble principle to justify administrative detention. It would also be preferable to delete the phrase "preventive detention" in the first sentence, because it made no sense in Spanish.

9. **Mr. Salvioli** pointed out that the Covenant clearly stated that detention was arbitrary if it did not comply with article 9, which could be derogated from only in accordance with

the provisions of article 4, which referred to an emergency which threatened the life of the nation. The Committee must be careful not to reduce the level of protection provided for under the Covenant. If the Committee decided to retain the current wording, it should make it clear that secret detention must not be used under any circumstances, as it was well known that such detention opened the door to torture and other cruel, inhuman or degrading treatment.

10. **Mr. Kälin** said that he understood the problem posed by the expression "threat to the security of the State" but felt that the phrase "public security" was too broad, because it did indeed cover post-conviction preventive detention. He suggested employing the concept of "national security", which was well established given that it appeared in articles 12, 13, 14, 19, 21 and 22, in which it was mentioned as a legitimate reason for restricting freedoms. There was nothing preventing the Committee from declaring detention on the ground of national security, as it was understood in the Covenant, to be arbitrary. He also supported Mr. Salvioli's proposal.

11. **The Chairperson** asked the Committee members whether they were in favour of borrowing the terminology contained in paragraph 4 of general comment No. 8.

12. **Ms. Chanet** said that the phrase "reasons of public security" was not ideal and that it would be preferable to avoid any characterization of the threat. If a State believed that it must resort to administrative detention in the light of certain circumstances, it was up to the State itself to justify those circumstances. The Committee could then remain in a supervisory role and would avoid locking itself into a concept that States might use against it.

13. **Mr. Rodríguez-Rescia** said that the concept of public security was broader than that of national security, because it referred to a natural and vital function of the State. By using such terminology, the Committee ran the risk of smoothing the path for States to limit the guarantees set out in article 9.

14. **The Chairperson** said that, in his view, the concept of "national security" should be avoided, as in recent years it had often come to be used as a justification for military dictatorships.

15. **Mr. Kälin** stressed the need to cover preventive detention after a sentence had been served (post-conviction preventive detention).

16. **Mr. Neuman** (Rapporteur for the general comment) proposed doing so by means of a footnote referring to paragraph 21, which dealt with post-conviction preventive detention. He also proposed deleting the phrase "threat ... *to the security of the State*" in the fourth sentence, which was superfluous.

17. *It was so decided.*

18. **Mr. Kälin** proposed amending the first sentence of the paragraph to read: "To the extent that States parties impose security detention (sometimes known as administrative detention or internment), not in contemplation of prosecution on a criminal charge, the Committee considers that such detention presents severe risks of arbitrary detention." A footnote after "prosecution on a criminal charge" would refer to paragraph 21 and to the paragraphs dealing with detention for purposes of extradition or immigration control.

19. *It was so decided.*

20. Following statements made by **Mr. Shany** and **Ms. Chanet**, **the Chairperson** suggested adding the following phrase at the end of the paragraph: "and disclosure to the detainee of, at least, the essence of the evidence against him".

21. **Mr. Shany** also proposed specifying in the fifth sentence that States parties must *show* that the required conditions had been met, as stated in the preceding sentence.

22. *It was so decided.*

23. **Mr. Salvioli** said that he was deeply concerned about the content of the paragraph and said that he reserved the right to return to it when the draft was considered again at a second reading.

24. *Paragraph 15 bis, as amended, was adopted.*

Paragraph 69

25. **The Chairperson** said that at its 3053rd meeting the Committee had adopted paragraph 69 apart from the last sentence, for which a new wording was proposed (document without a symbol, distributed in English, French and Spanish).

26. *Paragraph 69 was adopted with a minor drafting change.*

27. *Draft general comment No. 35, as a whole, as amended, was adopted on first reading.*

The discussion covered in the summary record ended at 11.30 a.m.